IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ranjeet Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.385/2001)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 29-6-2001 in Sessions Case No.144/1997 passed by Sh. Udai Singh Udawat, RHJS, Additional Sessions Judge No.1, Kishangarh Bas.

Date of Judgment: August 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Satyapal Poshwal, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

On the charge of committing rape on `W' (name with held by us) Ranjeet Singh (appellant herein) along with Kushal Singh was put to trial before the learned Additional Sessions Judge No.1 Kishangarh Bas, who vide judgment dated June 29, 2001 convicted and sentenced the appellant under section 376 IPC to suffer rigorous imprisonment for life and fine of Rs.50000/-, in default to further suffer rigorous imprisonment for one year. Since co-accused Kushal Singh died during pendency of trial the proceedings against him stood dropped.

2. It is the prosecution case that on August 3, 1997 `W' submitted a written report (Ex.P-1) to Superintendent of Police Alwar to the effect that on the preceding day around 6 PM while she was reaping Jwar in the field,

Ranjeet Singh and Kushal Singh caught hold of her and committed rape on her. Pursuant to the directions of SP Alwar the SHO Police Station Kishangarh Bas registered a case under section 376 IPC and investigation commenced. Site was inspected, statements of witnesses were recorded, appellant was arrested, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.1, Kishangarh bas. Charge under section 376 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 7 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in support of his defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned Amicus Curiae and learned Public Prosecutor and with their assistance scanned the material on record.

4. The prosecution examined `W' as (Pw.1), who in her deposition stated that while she was reaping Jwar on the field, Ranjeet Singh and Kushal Singh caught hold of her. Kushal Singh tied her mouth with her scarf and committed rape on her. She further stated that during the incident she received injuries on her person.

5. Dr. Amar Singh Rathore (Pw.6), who along with lady doctor examined `W', stated that she was 16-17 years of age, her hymen was old torn and no injury was found on her person. In his cross examination he stated that `W' was habitual of sexual intercourse. Medical Examination Report (Ex.P-9) of `W' reads as under:-

There is no external injury on abdomen and external genital. Pu admit two fingers, tenderness. Hymen torn. No bleeding at present."

Vaginal swab were sent for Radiology examination.

Ossification test of `W' was conducted and vide report (Ex.P-5) the age of `W' was 16-17 years.

6. Having weighed the ocular and documentary evidence adduced at the trial we find that although there are embellishments in the testimony of `W' but merely on the basis of inconsistencies and exaggeration in the evidence, it cannot be held that she was a consenting party to intercourse. In our opinion, the prosecution has established the charge of rape against the appellant beyond reasonable doubt.

7. Coming to the question of sentence, we notice that in the arrest-memo (Ex.P-8) age of appellant Ranjeet Singh was shown as 19 years. It appears to us that offence was committed by him in his youthful exuberance. This situation, in our opinion, warrant imposition of lesser sentence.

8. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age of the prosecutrix was between 15 to 17 years and the age of accused was 18 years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

"The question is: Whether the High Court is right in reducing

> the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

9. In State of MP V. Munna Choubey (2005)2 SCC 710, Hon'ble Apex Court propounded that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment. It was indicated in para 13 thus:-

> "After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Council McGautha v. State of California [402 US 182] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criterion to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished."

10. Taking into account all the circumstances of the case we are of the opinion that ends of justice would be served by reducing the sentence awarded to the appellant.

11. For these reasons, we partly allow the appeal and maintain the

conviction of appellant under section 376 IPC. However in the facts and circumstances of the case, the ends of justice would be served in reducing the sentence from rigorous imprisonment for life and fine to rigorous imprisonment for seven years and fine of Rs.1000/- in default to further suffer six months imprisonment.

The impugned judgment of trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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